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BILL ANALYSIS



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Senate Bills 873 through 877 (as introduced 4-12-16)

Sponsor: Senator Rick Jones (S.B. 873)
Senator Tonya Schuitmaker (S.B. 874)
Senator Ken Horn (S.B. 875)
Senator Margaret E. O'Brien (S.B. 876)
Senator Marty Knollenberg (S.B. 877)

Committee: Judiciary

Date Completed: 4-13-16

CONTENT

All of the bills amend the Crime Victim's Rights Act.

Senate Bill 873 would define "victim" as an individual who suffered harm as a result of a defendant's or juvenile's "course of conduct"; add a requirement for restitution for lost wages and other expenses resulting from a human trafficking offense; and otherwise revise provisions relating to required court-ordered restitution.

Senate Bill 874 would prohibit a court from waiving restitution or allocating restitution among defendants.

Senate Bill 875 would do the following:

- Revise provisions pertaining to notice to victims from the Department of Corrections (DOC) or a county sheriff concerning a prisoner sentenced to imprisonment under the DOC's or sheriff's jurisdiction.
- Expand provisions regarding the confidentiality of a victim's contact information.
- Expand the definition of "assaultive crime" under provisions requiring notice to a victim when a defendant or juvenile offender applies to have a conviction for an assaultive crime set aside.
- Specify that the Act would apply to all crimes, juvenile offenses, and serious misdemeanors regardless of when they were committed.

Senate Bill 876 would require a victim to be notified before the court ruled on a petition for early termination of probation; require the notice to indicate the victim's right to object; and otherwise revise provisions pertaining to victim notification of early release from probation.

Senate Bill 877 would do the following:

- Revise requirements that a prosecutor give a victim notice of information relating to his or her rights under the Act, and that the victim provide contact information.
- Expand provisions for confidentiality of a victim's identifying and contact information.

-- Require a court, to the extent practical, to provide a waiting area for the victim separate from the defendant's or juvenile offender's supporters.

Each bill is tie-barred to the others. Each bill would take effect 90 days after its enactment.

(Article 1 of the Crime Victim's Rights Act provides for rights of a victim of a crime that either is designated by law as a felony or is punishable by imprisonment for more than one year. Article 2 provides for rights of a victim of certain juvenile offenses. These include a violation of a penal law for which a juvenile offender, if convicted as an adult, may be punished by imprisonment for more than one year or an offense expressly designated by law as a felony, and certain other violations of law listed in Article 2. Article 3 provides for rights of a victim of a "serious misdemeanor". That term includes specific violations of law listed in Article 3.)

Senate Bill 873

Restitution

Articles 1, 2, and 3 all require a sentencing court to order the defendant or juvenile offender to make full restitution to any victim of his or her course of conduct that gave rise to the conviction or adjudication or to the victim's estate. The bill would refer to those entitled to inherit the victim's estate.

In each article, for purposes of the restitution requirement, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, juvenile offense, or misdemeanor. The bill would refer instead to such harm as a result of the defendant's or juvenile's course of conduct.

If a crime, juvenile offense, or serious misdemeanor results in damage to or loss or destruction of a victim's property, or in the seizure or impoundment of a victim's property, an order of restitution must require the defendant or juvenile offender to take certain actions. Under the bill, in each article, those actions would include paying an amount equal to the repair cost, if damaged personal or real property could be repaired to its condition before the defendant's or juvenile offender's course of conduct. One or more repair estimates could be used as a basis for restitution under these provisions.

Restitution in Human Trafficking Cases

Under the bill, Article 1 would require the court to order a defendant to pay all of the following when sentencing a person convicted of an offense described in Chapter 67A (Human Trafficking) of the Michigan Penal Code:

- Lost income.
- The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- Attorney fees and other costs and expenses incurred by the victim because of the offense.
- Any other loss suffered by the victim as a proximate result of the offense.

Lost income would have to be calculated by whichever of the following methods resulted in the largest amount:

- The gross amount received by the defendant from, or the value to the defendant of, the victim's labor or services.
- The value of the victim's labor or services as calculated under the Workforce Opportunity Wage Act or the Federal minimum wage, whichever resulted in the larger value.

Attorney fees and other costs would include costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings, including lost wages and child care, transportation, and parking expenses.

Senate Bill 874

Under Article 1, in determining the amount of restitution to order, the court must consider the amount of the loss sustained by any victim as a result of the offense. The bill would refer to the loss sustained by any victim as a result of the offense or the defendant's course of conduct.

In addition, the bill specifies that, pursuant to Article I, Section 24 of the State Constitution, and the Crime Victim's Rights Act, the court could not waive restitution or allocate restitution among defendants.

(Article I, Section 24 lists certain rights of crime victims, as defined by law. One of those rights is the right to restitution.)

Senate Bill 875

Notice from DOC or County Sheriff

Under Article 1, upon the written request of a victim, the DOC or sheriff must mail the victim notice of certain actions concerning a prisoner who has been sentenced to imprisonment under the DOC's or sheriff's jurisdiction. The bill would include notice that the prisoner had absconded, if longer than seven days.

Under Article 3, upon the written request of a victim of a serious misdemeanor, the sheriff must mail to the victim certain information about a prisoner who has been sentenced to imprisonment under the sheriff's jurisdiction for committing that serious misdemeanor. Within 30 days after the victim's request, the sheriff must send the victim notice of the sheriff's calculation of the prisoner's earliest release date, with all potential good time or disciplinary credits considered if the sentence exceeds 90 days. The victim may request notice of that calculation only once. The bill would delete that limitation on requesting the information.

Confidentiality of Victim Information

Under Articles 1 and 2, a victim's address and telephone number, maintained by a sheriff or the DOC upon a request for notice of information, are exempt from disclosure under the Freedom of Information Act (FOIA).

Under the bill, under Article 1, a victim's name, home address, home and cell phone numbers, e-mail address, work address, and work phone number maintained by a sheriff or the DOC upon a request for notice of information would be confidential, could not be disclosed for public inspection, and would be exempt from disclosure under FOIA.

Under Article 2, a victim's name, home address, home and cell phone numbers, e-mail or texting address, work address, or work phone number maintained by a sheriff, the Department of Health and Human Services, a county juvenile agency, or the DOC upon a request for notice of information would be confidential, could not be open for public inspection, and would be exempt from disclosure under FOIA.

Definition of "Assaultive Crime"

Under Article 1, if a defendant applies to have a conviction for an assaultive crime set aside, and if the prosecuting attorney knows the name of the victim, the prosecutor must give the

victim written notice of the application and forward a copy of it to the victim. Under Article 2, if a juvenile applies to have set aside a conviction for an assaultive crime or serious misdemeanor, or an adjudication for an offense that if committed by an adult would be an assaultive crime or serious misdemeanor, and the prosecuting attorney knows the victim's name, the prosecutor must give the victim notice of the application and forward a copy of it to the victim.

Currently, "assaultive crime" means that term as defined in Section 9a of Chapter 10 of the Code of Criminal Procedure. Under Section 9a, "assaultive crime" includes various assault offenses; attempted murder, first-degree murder, second-degree murder, and manslaughter; kidnapping; hostage-taking by a prisoner; mayhem; stalking; first-, second-, third-, and fourth degree criminal sexual conduct (CSC) and assault with intent to commit CSC; carjacking; use of force or violence, or possession of a weapon, during the course of committing larceny; a violation of Chapter 33 (Explosives and Bombs, and Harmful Devices) of the Michigan Penal Code; and a violation of the Michigan Anti-Terrorism Act.

Under the bill, "assaultive crime" would include any of the crimes included in Section 9a as well as any of the following offenses under the Michigan Penal Code:

- First-degree arson.
- Various assault offenses in addition to those included in Section 9a.
- Torture.
- First-degree home invasion.
- Burglary with explosives.
- Juror or witness intimidation.
- Exposing a child under the age of six in any street, field, house, or other place with intent to injure or abandon the child.
- First-, second-, or third-degree child abuse.
- Vulnerable adult abuse.
- Ethnic intimidation.
- Solicitation to commit murder or any felony.
- Breaking or escaping a jail, health care facility, or other place of confinement.
- Maliciously threatening to extort money or any pecuniary advantage.
- Intentionally discharging a firearm from a motor vehicle, snowmobile, or off-road vehicle; at a dwelling or potentially occupied structure; or at an emergency or law enforcement vehicle.
- Delivery of a Schedule 1 or 2 controlled substance, other than marihuana, causing death.
- Causing death due to explosives.
- Discharging a firearm pointed or aimed without malice and causing death.
- Unlawful imprisonment.
- Malicious destruction of police or fire department property.
- Throwing, propelling, or dropping a stone or other dangerous object at a train or motor vehicle, causing serious impairment or death.
- Placing a harmful object in food or poisoning food, drink, or medicine.
- Resisting or obstructing a police officer in the discharge of his or her duty.
- Failure to obey the direction of a law enforcement officer to stop a motor vehicle or vessel.
- Withholding or refusing to produce testimony or information pursuant to a court order, or influencing or retaliating against another regarding information in a criminal investigation.
- Robbery of a bank, safe, or vault.
- Willfully and maliciously cutting, breaking, disconnecting, interrupting, tapping, or making an unauthorized connection with any electronic medium of communication resulting in injury to or the death of a person.

The term also would include any of the following violations of other statutes:

- A moving violation causing death or serious impairment.

- First- or second-degree fleeing and eluding.
- Leaving the scene of an accident that resulted in serious impairment or death.
- Drunk or impaired driving causing serious impairment or death.
- Reckless driving causing serious impairment or death.
- Failing to exhibit due care and caution when passing a stationary emergency vehicle, causing serious impairment or death.
- Operating a vehicle with a suspended, revoked, or denied license, causing serious impairment or death.
- Owning a dangerous animal that causes death or serious injury.
- Obstructing, resisting, or opposing a conservation officer or any other peace officer in the performance of duties under the Natural Resources and Environmental Protection Act.
- Careless, negligent, or reckless operation of a vessel causing crippling injury or death.
- Drunk or impaired operation of a motorboat causing serious impairment or death.
- Careless operation of a snowmobile causing serious impairment.
- Drunk or impaired operation of a snowmobile causing serious impairment or death.
- Engaging in sexual penetration with another, when the actor knows he or she has AIDS or is HIV positive, without having first informed the other person.
- Furnishing alcohol to a minor.
- Engaging in a riot, incitement to riot, or rioting at a State correctional facility.
- Careless, reckless, or negligent use of a firearm or bow and arrow, killing or injuring another person.

Applicability of Articles

Article 1 provides that it applies only to crimes committed on or after October 9, 1985 (the effective date of that article). Articles 1 and 2 provide that they apply only to juvenile offenses or misdemeanors committed on or after June 1, 1988 (the effective date of those articles).

Under the bill, Articles 1, 2, and 3 would apply to all crimes, juvenile offenses, and misdemeanors, respectively, regardless of when they were committed.

Senate Bill 876

Articles 1, 2, and 3 specify that, if a defendant or a juvenile offender is sentenced to probation with a condition for the protection of the victim, and if requested by the victim, the court must notify the victim by mail if it orders that the probation be terminated earlier than previously ordered. The bill would delete these provisions.

The bill specifies instead that, before ruling on a petition for early termination of probation, the court would have to notify a victim of the defendant's or juvenile's course of conduct, by mail, if the petition concerned any of the following:

- A defendant or juvenile whose probation included a condition for the protection of the victim.
- A defendant or juvenile who had not fully paid an order of restitution.
- A defendant or juvenile who was the subject of a personal protection order listing the victim as a protected party.

The notice would have to be given at least 14 days before a hearing on the petition and would have to indicate that the victim had a right to submit to the court a statement objecting to the early discharge from probation, based on concern for personal safety or concern about satisfaction of the restitution order.

Under Article 1, the bill also specifies that, if a defendant were sentenced to probation and the probation officer petitioned the court to have the defendant discharged from probation

earlier than previously ordered, the court would have to notify the prosecuting attorney by mail at least 14 days before the defendant was discharged.

Senate Bill 877

Provision of Notice & Contact Information

Under Article 1, within seven days after the defendant's arraignment, and at least 24 hours before a preliminary examination, the prosecuting attorney must give each victim a written notice in plain English of certain information related to the victim's rights under the Act. Under the bill, that notice would have to be given within seven days after the arraignment and at least 24 hours before the date set for a probable cause conference or a preliminary examination, whichever was earlier.

Similar notices must be provided under Articles 2 and 3. Under all three articles, if a victim who receives the required notice chooses to receive any notice or exercise any right under the Act, he or she must keep certain officials informed of his or her current address and telephone number. The bill also would require the victim to keep those people informed of his or her e-mail or texting address.

Confidentiality of Information

Under Article 1, a victim's address and phone number and work address and telephone number may not be in the court file or ordinary court documents unless contained in a transcript of the trial or used to identify the place of the crime. Under the bill, in all three articles, the name, work address, and address of a victim would be confidential and could not be open to the public unless they were contained in a transcript of the trial or used to identify the place of the offense. The victim's work and home phone numbers, cell phone number, and e-mail or texting address would be confidential and could not be open to the public except as contained in a transcript of the trial.

In all three articles, pursuant to Article I, Section 24 of the State Constitution, certain information and visual representations of a victim are exempt from disclosure under the Freedom of Information Act. That information includes the victim's home address and phone number, and work address and phone number. The bill would include the victim's name, cell phone number, and e-mail or texting address in the information exempt from disclosure.

Separate Waiting Area

Articles 1, 2, and 3 all require the court to provide a waiting area for victims that is separate from the defendant or juvenile offender, the defendant's or juvenile's relatives, and the defense or juvenile's witnesses, if such an area is available and its use is practical. If a separate waiting area is not available or practical, the court must provide other safeguards to minimize the victim's contact with those people. The bill would include separation from or minimized contact with the defendant's or juvenile's supporters in those provisions.

MCL 780.766 et al. (S.B. 873)
780.767 (S.B. 874)
780.760 et al. (S.B. 875)
780.768 et al. (S.B. 876)
780.756 et al. (S.B. 877)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 873

The bill would have no fiscal impact on the State and could have a minimal negative fiscal impact on local government. It would change the definition of a victim from an individual who suffers harm as a result of the commission of a crime to an individual who suffers harm as a result of the defendant's (or juvenile's) course of conduct. This could be interpreted to allow a greater number of victims to seek restitution under the Act, which could lead to more hearings for restitution. An increase in hearings could increase resource demands on local court systems.

Also, if additional victims were covered by the Act, there could be an increase in State and local costs to mail required notices.

Senate Bill 874

The bill would have no fiscal impact on State or local government.

Senate Bill 875

The bill could result in costs to both State and local government. Currently, the Act's requirements for victim notification and restitution hearings apply only to offenses committed after certain dates. The bill would remove those dates, extending the requirements to offenses subject to the Act regardless of when they were committed. The bill also would expand the Act's definition of "assaultive crime". To the extent that additional victims would exercise their rights and privileges under the Act, or would have to be notified of an application to have a conviction of an assaultive crime set aside, there could be an increase in restitution hearings and mailing costs for the State and local government.

Senate Bill 876

The bill could have a minimal negative fiscal on State and local government. The Act requires the court to notify a victim by mail before ruling on a petition for early termination of probation for a defendant (or juvenile) if the probation includes a condition for protection of the victim and if requested by the victim. The bill would add the notification requirement if the defendant (or juvenile) had not fully paid an order of restitution or if the defendant (or juvenile) were the subject of a personal protection order listing the victim as a protected party. The bill also would delete the requirement for a request from the victim. To the extent that these changes led to the requirement that more notifications be sent, there could be an increase in mailing and administration costs for State and local government.

Senate Bill 877

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.